

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. L 2007040474

ADRIAN C.,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

**DECISION**

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 15, 2007, in San Bernardino, California.

Rhonda Morris, advocate, represented claimant, who was not present at the fair hearing.

Vince Toms, Consumer Services Representative, Inland Regional Center, represented the service agency.

The matter was submitted on May 15, 2007.

**ISSUE**

Should the service agency fund a specialized stroller (Convoid Cruiser) for the consumer?

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. Claimant Adrian C. was born on June 17, 1997. Claimant has a “developmental disability” involving autistic disorder and mental retardation, and is eligible

for regional center “services and supports for persons with developmental disabilities” pursuant to Welfare and Institutions Code section 4712.<sup>1</sup> Services and supports are provided through the Inland Regional Center (IRC), the family’s service agency.

2. On April 6, 2007, a fair hearing request was made on claimant’s behalf. The request asserted that IRC should fund a “specialized stroller that was prescribed and requested by” claimant’s neurologist, pediatrician, and an IRC occupational therapist.

### *Background*

3. Adrian, who was almost ten years old at the time of the hearing, has been diagnosed with severe mental retardation, pervasive developmental disorder, autism, and epilepsy. Adrian is non-verbal and ambulatory. He communicates by grunting and leading people to desired objects. He needs assistance to complete all of his daily living skills, including dressing, personal hygiene, and bathing. He lacks bowel and bladder control, and wears diapers.

Adrian requires supervision at all times. He has a history of elopement, inappropriately undressing in public, and being aggressive toward others. He also has a history of tantrums and self-injurious behaviors (e.g., head banging). He does not have any safety awareness. He has poor social skills and peer interactions.

Adrian lives with his parents, his older brother and his two younger sisters, “in a loving and supportive home environment.” His brother has also been diagnosed as autistic and receives regional center services.

4. As of the date of the hearing, Adrian was home schooled through the Hesperia Unified School District, and receives 40 hours per week of comprehensive education training. Adrian also receives ten hours per week intensive one-on-one applied behavioral analysis (ABA) through Comprehensive Autism Services and Education (CASE) to address behavioral issues. Adrian also participates in a social recreation program through Inroads, to help him develop and improve his social skills in the community. In this regard, he receives 39 hours per month of 1:1 ratio social recreation (community integration). This program is implemented by a personal “coach,” who takes Adrian out into the community for interaction with non-disabled peers, in order to develop his social skills. Adrian also receives 40 hours per month of preferred provider respite through Maxim Health Care Services.

### *The Request for the Convaid Cruiser Specialized Stroller*

5. In August 2006, Adrian’s parents requested that IRC fund a “Convaid Cruiser,” a specialized stroller for the developmentally disabled, for Adrian. Prior to that

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<sup>1</sup> All statutory references in this Decision are to the Welfare and Institutions Code, unless otherwise noted.

time,<sup>2</sup> Adrian had been using a regular stroller, purchased at a retail store such as Target or WalMart, when his parents took him on community outings. However, Adrian had outgrown the regular stroller, and his parents were unable to find a new one that was big enough to accommodate him. In lieu of the stroller, Adrian's family presently uses "a harness device to allow Adrian the opportunity to have mobility" during community outings. The device is intended to keep Adrian from "bolting," (i.e., running away), which he has a tendency to do in both the home and community settings. With only the harness to restrain him, Adrian must be accompanied by two adults when on community outings in order to keep him from running away and potentially hurting himself and others.

6. The Convaid Cruiser comes with a "safety harness to keep Adrian securely in the seat," i.e., "to prevent Adrian from releasing himself during inappropriate times." Adrian's parents believe that "the pressure exerted by the harness would act as a calming device for Adrian. He has historically been calmed by the pressure of a weighed blanket and vest." Adrian's parents also believe that the "harness would assist in stopping Adrian from grabbing and slapping at others in the community." A required torso vest would "help to prevent [Adrian] from injuring himself." The cost of the cruiser, including required accessories, is approximately \$2,250, after the application of a discount.

7. IRC's Gabriele Carr, Adrian's consumer services coordinator, referred the request of Adrian's parents for a Cruiser to Michelle Knighten, MPT, the IRC physical therapist who evaluates equipment. Attached to the referral were notes from Adrian's mother, pediatrician, and neurologist. MPT Knighten recommended approval of the Cruiser,<sup>3</sup> but the final decision, made by IRC's Chief of Children's Services, Dr. Eliana Lois, M.D., was to deny the request.

8. On March 28, 2007, IRC sent a letter to Adrian's parents, notifying them that their request for a Cruiser was denied. The request was denied "since this service does not modify or alleviate Adrian's behavior."

### *The Need for the Cruiser*

9. IRC's Gabriele Carr is an IRC consumer services coordinator. Her job duties involve helping families with developmentally disabled children and assisting them to locate and explore services to help them in the community, at school, and at home. She holds a B.A. in psychology and social relations. Adrian has been assigned to her caseload for six years. She meets with him four times per year. Carr testified with regard to Adrian's severe

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<sup>2</sup> The evidence in the record is in conflict with regard to when Adrian outgrew the regular store-bought stroller, as certain documentation suggests a date of April 2007, instead of August 2006. A resolution of this evidentiary conflict is, however, unnecessary, as Adrian's need for the Cruiser does not depend on the precise date when he outgrew the store-bought stroller.

<sup>3</sup> In her December 20, 2006 assessment, Knighten stated that, "Adrian benefit from a Convaid Cruiser." This sentence begins a paragraph that describes the positive features of the Cruiser and how they would help Adrian. Knighten stated that IRC "should consider funding the conveyed cruiser for Adrian to access the community, school and to use around his home." In light of this context, it seems likely that the word "would" was inadvertently omitted from Knighten's statement that "Adrian benefit from" a Cruiser.

mental retardation and autism, his lack of social skills, his elopement issues, lack of any safety awareness, daily tantrums, self-injurious behavior (e.g., pulling his hair, banging his head), and aggression (e.g., hitting, pinching, spitting at others).

Carr testified that Adrian's mother requested the Cruiser so that she could take Adrian out into the community for medical appointments, family outings and other activities. The harness Adrian's parents currently use in lieu of a stroller prevents him from running away. However, the harness is of no assistance when Adrian tantrums and refuses to walk. On those occasions, a stroller would relieve them of that burden on those occasions. As of August 2006, Adrian weighed 57 pounds.

10. Udaya R. Kamath, M.D., Adrian's pediatrician, issued a prescription for the Cruiser, stating that Adrian "needs Convaid Cruiser," noting the diagnoses of autism and epilepsy, as well as Adrian's self-injurious behavior. Dr. Stanford Shu, M.D., Adrian's neurologist, also issued a prescription for the Cruiser, noting among other things Adrian's "self injury."

11. IRC's Dr. Lois oversees all purchases of durable medical equipment. Dr. Lois is a pediatrician, who practiced at Loma Linda University for over 20 years, where in 1996 she became an associate professor of pediatrics. She was employed at IRC on a part-time basis beginning in 1993, and has worked for IRC full-time since 2000. Even before Dr. Lois's employment at IRC, she worked with children with developmental disabilities. More specifically, Dr. Lois has worked with hundreds of children with autism over the past 27 (and especially the past ten) years.

Dr. Lois testified that she has never met or examined Adrian, but that she reviewed his medical records, and was aware of the Cruiser prescriptions of Drs. Kamath and Shu. Dr. Lois denied the request for the Cruiser because Adrian is ambulatory, so that there is no medical necessity for the Cruiser, and because she believed the Cruiser would be used as a "restraining device," which would be contrary to IRC's core values of "inclusion, empowerment, and advancement." She elaborated that the Cruiser is the "most restrictive method of safely accessing the community," and is thus inappropriate, in that a less restrictive method is, or may be, available through the District. Dr. Lois believes that Adrian is best served by a more detailed behavioral component of his applied behavioral analysis (ABA) program. In other words, Dr. Lois believes that the way to address Adrian's behavioral issues is through working directly on Adrian's inappropriate behaviors, and not by means of a restraining device. She thus believes that Adrian's continued participation in ABA is the most important thing that can be done for him; she also recommends continuation of his social recreational services.

12. Susan Sontag-Crisanto is a child protective services social worker who has been employed in that capacity with the County of Riverside for 22 years. She testified that she is a close personal friend of Adrian's mother. Sontag-Cristano has autistic children on her caseload, and has also spent much time in Adrian's home and has observed Adrian and his brother. More specifically, Sontag-Crisanto testified that she has observed Adrian's problem behaviors, e.g., his aggression, running off from his parents, and throwing "toddler-

like tantrums” on the kitchen floor. Adrian has hit and has attempted to bite Sontag-Cristano.

Sontag-Crisanto expressed the opinion that it is very difficult for Adrian’s mother to bring Adrian along to a mall or other setting outside of the home, because he is so difficult to control. Sontag-Cristano expressed the view that the Carrier would be of assistance with regard to family outings. She expressed concern that the “family as a whole” would suffer if funding for the Carrier were not approved. She stated that Adrian’s parents are “extraordinary,” that they “go above and beyond” to keep their two autistic sons at home, and that accordingly they should be given “every help possible.”

13. Silvana Webber is Adrian’s social recreation coach. She testified that she has had eight years of training in ABA and related matters. She is currently employed by Inroads, an IRC community integration vendor.

Webber testified that when she takes Adrian out into the community (e.g., to a public park), he at times suddenly, “out of nowhere,” gets anxious, starts to hit or slap himself, and drops to the ground. The harness that he wears does not prevent this from occurring. When this happens, Webber is unable to get Adrian back on his feet. Accordingly, the harness Adrian’s family now uses prevents Adrian from running away, but not from tantruming. Webber has tried to take Adrian to a store or a mall, but this is very difficult to do, as there are too many people around, which tends to make Adrian anxious, leading to his problem behaviors. On such occasions, he may grab at things, throw himself on the ground, or reach for other children. Two people are needed to accompany Adrian on community outings, one holding on to each of his hands. Even with two adults present, he sometimes will drop to the ground. Adrian last went to a store or to the mall perhaps over a year ago (Webber could not remember exactly how long it has been).

Webber believes Adrian needs a Convaid Cruiser. She described the kind of community program she would implement with Adrian, should the Cruiser’s purchase be approved. The program would involve a series of “tiny steps at a time,” e.g., taking Adrian to a mall or other public arena for two to three minutes to get him used to the environment, then gradually bringing him in his Cruiser to the facility’s entrance, then having him get out of the Cruiser and touch the entrance door, then having him get out of the Cruiser and enter the facility to look around for “a minute.” She believes it would be helpful to have “something there,” such as the Cruiser, in case Adrian has a “meltdown.” She does not believe the Cruiser is properly characterized as a restraint, but is instead something that gives Adrian security. Adrian needs some kind of tool to get him out into the community and acclimated. The Cruiser is one option to accomplish that.

14. IRC has a written policy concerning “special equipment: durable and non-durable miscellaneous items.” In pertinent part, the policy provides as follows:

“In cases where no other funding is available, medical equipment may be purchased to meet the needs of a consumer and to support that consumers [sic] living or program choices. Such equipment includes: orthopedic shoes, hearing aids,

special communication devices, protective helmets, wheelchairs, wheelchair repairs, walking support devices, and other equipment for non-ambulatory individuals. Restraining devices will not be purchased unless approved by the Director or his designee and the Consumer Rights Advocate. . . .” (IRC Policy 1.2.4(a).)

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. “The moving party—that is, the party asserting the claim or making the charges—generally has the burden of proof” in administrative proceedings. (Cal. Administrative Hearing Practice (Cont. Ed. Bar 2d ed. 1997) § 7.50, p. 365.) No published decision has been found that addresses the applicability of this general principle to Lanterman Act fair hearing proceedings. It is concluded by analogy, however, that the party in such proceedings who seeks to change the status quo has the burden of proof. In the present proceeding, by virtue of the request of Adrian’s parents for a Convaid Cruiser on Adrian’s behalf, it is the claimant who seeks to change the level of services. Accordingly, claimant has the burden of proof.<sup>4</sup>

In the absence of any statute to the contrary, the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.) “The phrase ‘preponderance of evidence’ is usually defined in terms of probability of truth, e.g., ‘such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.’ (BAJI (8<sup>th</sup> ed.), No. 2.60.)” (1 Witkin, Evidence, *Burden of Proof and Presumptions* § 35 (4<sup>th</sup> ed. 2000).)

### *Statutory and Regulatory Authority*

2. “The Legislature has enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act . . . to provide a ‘pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life.’ (§ 4501.) Such services include locating persons with developmental disabilities (§ 4641); assessing their needs (§§ 4642-4643); and, on an individual basis, selecting and providing services to meet such needs (§§ 4646-4647). The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509, 4685), and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community (§§ 4501, 4750-4751).

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<sup>4</sup> See also Evidence Code section 500, which provides that “[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” In this proceeding, it is the consumer who has made the claim for relief.

\* \* \*

In the Lanterman Act '[the] State of California accepts a responsibility for its developmentally disabled citizens and an obligation to them which it must discharge.' (§ 4501.) In so doing, the Legislature has not only recognized that '[persons] with developmental disabilities have the same legal rights and responsibilities [as those] guaranteed all other individuals by the Federal Constitution and laws and the Constitution and laws of the State of California' (§ 4502), but has also granted them certain statutory rights, including the right to treatment and habilitation services at state expense. (See §§ 4502, 4620, 4646-4648.)

To implement this scheme of statutory rights of developmentally disabled persons and the corresponding obligations of the state toward them, the Legislature has fashioned a system in which both state agencies and private entities have functions. Broadly, DDS, a state agency, 'has jurisdiction over the execution of the law relating to the care, custody and treatment of developmentally disabled persons' (§ 4416), while 'regional centers,' operated by private nonprofit community agencies under contract with DDS, are charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime' (§ 4620)." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388-390.)

3. Welfare and Institutions Code section 4501 provides in pertinent part:

"The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors, and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance.

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An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas. These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community

living arrangements. In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way in which they spend their time, including education, employment, and leisure, the pursuit of their own personal future, and program planning and implementation. The contributions made by parents and family members in support of their children and relatives with developmental disabilities are important and those relationships should also be respected and fostered, to the maximum extent feasible, so that consumers and their families can build circles of support within the community.”

4. Welfare and Institutions Code section 4502 provides in pertinent part:

“Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California. No otherwise qualified person by reason of having a developmental disability shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

(a) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.

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(h) A right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect.”

5. Welfare and Institutions Code section 4512 provides in pertinent part:

As used in this division:

“(a) ‘Developmental disability’ means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related



to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

(b) ‘Services and supports for persons with developmental disabilities’ means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . .”

6. Welfare and Institutions Code section 4646 provides in pertinent part:

“(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.”

7. Welfare and Institutions Code section 4648 provides in pertinent part:

“(a) (1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.”

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be

flexible and individually tailored to the consumer and, where appropriate, his or her family.”

8. California Code of Regulations, title 17, section 51160 provides in pertinent part:

“Durable medical equipment means equipment prescribed by a licensed practitioner to meet medical equipment needs of the patient that:

- (a) Can withstand repeated use.
- (b) Is used to serve a medical purpose.
- (c) Is not useful to an individual in the absence of an illness, injury, functional impairment, or congenital anomaly.
- (d) Is appropriate for use in or out of the patient's home.”

#### *Analysis*

9. The foregoing authority may be summarized in the context of the present proceeding as follows:

(a) The twofold purpose of the Lanterman Act is to prevent or minimize the dislocation of developmentally disabled persons from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at 388-390.)

(b) Each person with a developmental disability has a statutory right to treatment and rehabilitation services. (*Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at 389; §§ 4502, 4646, 4648.)

(c) Services and supports should be provided so as to promote opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities. Consumers and their families, when appropriate, should participate in decisions affecting their own lives. (§ 4501.)

(d) Persons with developmental disabilities have a right to treatment and habilitation services and supports in the least restrictive environment. Such services should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal life possible. Services should be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports. Further, developmentally disabled persons have a right to be free from harm, including *unnecessary* physical restraint. (§ 4505, subds. (a) and (h).)

(e) The determination of services and supports to be provided to developmentally disabled persons should be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family. Services and supports should be flexible and individually tailored to the consumer and, where appropriate, his family. (§§ 4512, subd. (b), 4646, subd. (a), and § 4648, subd. (a)(2).)

10. Based on the applicable burden of proof, it is concluded that IRC should be required to fund a Convaid Cruiser for Adrian.

It is undisputed that social recreation for the purpose of community integration is a necessary and appropriate component of Adrian's services and supports. Because of Adrian's history of elopement, self-injurious behaviors, aggression, and tantrums, it is concluded that Adrian requires, for his own safety and comfort, some sort of restraint when he goes into the community. The two options presented at the hearing were a Convaid Cruiser and a harness. Adrian's parents presently use a harness; it is asserted, however, that the harness is insufficient and that a Cruiser is needed.

The evidence supporting the request for a Cruiser includes the following: (a) the issuance by Adrian's pediatrician and neurologist of prescriptions for the Cruiser; (b) the recommendation of IRC's physical therapist; (c) the opinion of Adrian's social recreation coach; (d) Adrian's tantruming, self-injurious and aggressive behavior, all of which at times occur suddenly without warning; (e) the need (absent the Cruiser) for two adults to accompany Adrian at all times on community outings; (f) the occasional need of Adrian's parents (absent the Cruiser) to carry him during a tantrum when he refuses to walk; and (g) the belief of Adrian's parents that the Cruiser and related equipment would help stop him from grabbing and slapping at others, and would constitute a calming influence on him.

The evidence opposing the request for a Cruiser includes the following: (a) The opinion of Dr. Lois that the Cruiser is not medically necessary and would constitute an overly restrictive method of providing for Adrian's safety; and (b) that the Cruiser in fact constitutes a more restrictive method of providing both for Adrian's integration into the community and safety than does the harness plus two individuals.

Clearly, the Cruiser is a more restrictive method of providing for Adrian's safety than is a harness alone. However, it does not necessarily follow that the Cruiser provides a less effective means of integrating Adrian into the community. In this regard, because of the need, absent a Cruiser, for two adults to accompany Adrian on all community outing, and because of the increased difficulties incident to caring for Adrian on such outings (e.g., the need to carry him if he suddenly refuses to walk), in all likelihood Adrian is, and will be, taken on substantially fewer outings without the Cruiser than he would with it. It is concluded that the Cruiser, while more restrictive than the harness, is the least restrictive means of ensuring Adrian's safety and that of others during his community outings. The Cruiser also addresses the needs and preferences of Adrian's parents.

11. By reason of Factual Findings 1 through 14 and Legal Conclusions 1 through 10, it is concluded that the service agency should be required to fund a Convaid Cruiser for claimant Adrian C.

Accordingly, there is hereby issued the following:

#### ORDER

1. Claimant's appeal is granted. Accordingly, the service agency shall fund a Convaid Cruiser for claimant Adrian C.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
DONALD P. COLE  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

**This is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.**